

8/17/90

2150.3A CHG 6
Appendix 1

Figure 5. SAMPLE FINAL NOTICE OF PROPOSED CERTIFICATE ACTION
(Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Calibur Way
Pistol, South Gun 00000

Re: Case No. 90NM768910

FINAL NOTICE OF PROPOSED CIVIL PENALTY

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$750. As of [date of Final Notice], we have received no response to this Notice. [or] We have considered the information submitted in response to this Notice.

After considering all the evidence in this matter, including the information submitted at the informal conference on March XX, 19XX, it appears that:

[Insert allegations of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.]

Under sections 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), you are subject to a civil penalty not to exceed \$1,000 for each of the violations noted. By reason of the foregoing facts and circumstances, we propose to assess a civil penalty in the amount of \$750.

Unless you mail or personally deliver, in writing, your request for a hearing in this matter, on or before 15 days after you receive this Final Notice, we will issue an Order Assessing Civil Penalty and you will have no further right to a hearing. If you do not submit a written request for a hearing, you must pay the proposed civil penalty.

Your request for a hearing must be sent to the Hearing Docket, Federal Aviation Administration, 800 Independence Ave., SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk, and a copy must be sent to the undersigned FAA attorney. Your request must be dated and signed, in accordance with section 13.16 of the Federal Aviation Regulations, sent to you with the Notice of Proposed Civil Penalty (14 C.F.R. 13.16).

8/17/90

You may pay the proposed penalty by submitting a certified check or money order payable to the "Federal Aviation Administration," to the undersigned.

Assistant Chief Counsel

By:

Attorney

8/17/90

2150.3A CHG 6

Appendix 1

Figure 6. SAMPLE ORDER ASSESSING CIVIL PENALTY
(Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Calibur Way
Pistol, South Gun 00000

Re: Case No. 90NM768910

ORDER ASSESSING CIVIL PENALTY

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$750.

After consideration of all of the available information, including the information you presented at the March XX, 19XX, informal conference, it has been determined that:

[Insert findings of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.]

NOW, THEREFORE, IT IS ORDERED, pursuant to section 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), that you be and hereby are assessed a civil penalty in the amount of \$750.

[include one of the following]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a certified check or money order in the amount of \$750, payable to "Federal Aviation Administration," to Attorney, Office of the Chief Counsel/Office of the Assistant Chief Counsel, address. [or] We hereby acknowledge receipt of your check in the amount of \$750 which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____

Attorney

8/17/90

Figure 7. SAMPLE ORDER ASSESSING CIVIL PENALTY
WITH WAIVER OF PENALTY

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Al T. Tude
747 Boeing Circle
Deviation, LO 00000

Re: Case No. 90MN123450

ORDER ASSESSING CIVIL PENALTY
WITH WAIVER OF PENALTY

On February XX, 19XX, you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$1,200.

After consideration of all of the available information, including the information you presented at the March XX, 19XX, informal conference, it has been determined that:

[Insert findings of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.]

NOW, THEREFORE, IT IS ORDERED, pursuant to section 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. App. 1471 and 1475), that you be and hereby are assessed a civil penalty in the amount of \$1,200.

Assistant Chief Counsel

By: _____
Attorney

WAIVER OF PENALTY

The FAA determined that you are entitled to a waiver of penalty under the Aviation Safety Reporting Program, by reason of your having filed a timely report of the incident which is the subject of this case under that program, and otherwise meeting all of the requirements for such waiver. Accordingly, the civil penalty assessed in this order, although remaining a matter of record, will not actually be imposed. You are not required to pay the civil penalty. You may consider this matter closed.

8/17/90

2150.3A CHG 6
Appendix 1

Figure 8. SAMPLE COVER LETTER FOR FILING A COMPLAINT
(Federal Aviation Act)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, SW.
Room 924A
Washington, DC 20591

Attn: Hearing Docket Clerk

Re: In the Matter of Annie O. Kley
Case No. 90MN768910

Enclosed herewith please find a copy of a request for hearing and the original and one copy of the Complaint in the above-referenced proceeding.

The FAA requests that the hearing in this matter be held in the Atlanta, Georgia, area, and expects that the hearing will last one day.

Please address all communications for the FAA to the undersigned, at:

Federal Aviation Administration
Region, AXX-7
Post Office Box XXXXX
City, State XXXXX
Telephone: (XXX) XXX-XXXX; FTS XXX-XXXX
FAX: (XXX) XXX-XXXX; FTS XXX-XXXX

Sincerely,

Attorney

Enclosed: Request for Hearing
Complaint

cc: Respondent (with copy of Complaint)

8/17/90

Figure 9. SAMPLE COMPLAINT FILED WITH THE HEARING DOCKET

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

In the Matter of:)
)
)
)
)

ANNIE O. KLEY)

FAA DOCKET CPXXXX _____

JUDGE NOT ASSIGNED

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I.

1. On February XX, 19XX, Respondent Annie O. Kley was advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$750. On August XX, 19XX, Respondent submitted a written request for a hearing.

II.

1. On or about December XX, 19XX, respondent presented herself and her accessible property for inspection at the "L" Concourse Security Screening Checkpoint of the Portland International Airport in Portland, Oregon.

2. At that time, respondent was not a ticketed passenger.

3. Upon inspection of respondent's accessible property, a Jennings Firearm, Inc., .22-caliber semi-automatic pistol, bearing serial number 123456, and one ammunition clip containing 6 live .22-caliber rounds of ammunition were discovered in your briefcase.

III.

1. By reason of the foregoing facts and circumstances, respondent violated section 107.21(a)(1) of the Federal Aviation Regulations in that respondent had a firearm on or about her person or accessible property when performance began of the inspection of her person or accessible property before entering a sterile area.

2. Pursuant to sections 901 and 905 of the Federal Aviation Act, as amended (49 U.S.C. app §1471 and 1475), Respondent is subject to a civil penalty not to exceed \$1,000 for each of the violations alleged.

3. Under the facts and circumstances of this case, a civil penalty of \$750 is appropriate.

8/17/90

WHEREFORE, the Agency, by counsel, respectfully requests
that the Administrative Law Judge enter an order that
Respondent be assessed a civil penalty in the amount of \$750.

Respectfully submitted this _____ day of _____, 19XX.

Agency Attorney

8/17/90

2150.3A CHG 6
Appendix 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint has been mailed
this date by Certified Mail, Return Receipt Requested, to:

Respondent
address

Attorney
address

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, SW.
Room 924A
Washington, DC 20591

Attorney
Office of Assistant Chief Counsel
Address

Date

8/17/90

Figure 10. FORM FOR TRANSMITTAL OF APPEAL TO AGC-250

TO: AGC-250 FROM: _____ DATE: _____

RE: Transfer of case on appeal

Case Name: _____	: _____ FOR AGC-250 USE
_____	: _____
_____	: AGC-250 Attorney _____
Docket No. _____	: _____
_____	: Appeal Brief Due _____
FAA Case No. _____	: _____
_____	: Reply Brief Due _____

FAA Trial Attorney: _____ PTS: _____

Date of (oral/written) initial decision: _____
(Specify whether the decision was oral or written)

Cross-Appeal? _____

FAA's-Appeal? _____

Respondent's Appeal? _____

FOR ALL CASES, identify significant problems with the case,
if any.

FOR ALL APPEALS, identify the issue(s) you believe should be
appealed.

FOR ALL APPEALS, identify each alleged FAR violation that the
ALJ rejected and that you believe the FAA should NOT pursue
on appeal.

Figure 11. SAMPLE COMPLAINT FOR
COLLECTION OF ASSESSED CIVIL PENALTY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF SOUTH GUN

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*****
UNITED STATES OF AMERICA,
    Plaintiff
v.
ANNIE O. KLEY,
    Defendant
*****
Civil Action No.
  
```

COMPLAINT

COMES NOW the Plaintiff, the United States of America,
by and through its undersigned attorneys, and for a cause of
action against the Defendant alleges:

I

This is a suit of civil nature brought by the United
States of America to reduce to judgment a civil penalty
assessed against the Defendant by the Federal Aviation
Administration (FAA) pursuant to the Civil Penalty Assessment
Authority, Section 905 of the Federal Aviation Act of 1958, as
amended (the Act) [Title 49 U.S.C. App. 1475], and pursuant to
Section 901 of the Act [Title 49 U.S.C. App. 1471].

8/17/90

II

Jurisdiction is specifically conferred upon this court by Sections 903 and 905 of the Act [Title 49 U.S.C. App. 1473 and 1475] and Title 28 United States Code, Sections 1345 and 1355.

III

As Defendant Annie O. Kley is a resident of Pistol, South Gun, venue is conferred upon this Court by Section 1395(a) of Title 28, United States Code.

IV

By Notice of Proposed Civil Penalty issued on February XX, 19XX, the Federal Aviation Administration, an agency of the United States Department of Transportation, notified the Defendant that it proposed to assess against her a civil penalty of \$750 for a violation of Section 107.21(a)(1) of the Federal Aviation Regulations [14 C.F.R. 107.21(a)(1)]. The Notice advised the Defendant of an opportunity for a hearing described in 14 C.F.R. Sections 13.16 and 13.201 et seq.

V

The Defendant did not respond to the Notice of Proposed Civil Penalty.

VI

On or about April XX, 19XX, the FAA issued to the Defendant a Final Notice of Proposed Civil Penalty, proposing to assess a civil penalty in the amount of \$750 for violating Section 107.21(a)(1) of the Federal Aviation Regulations (14 C.F.R. 107.21(a)(1)) and advising the Defendant that, unless she requests a hearing within 15 days after receipt of this Final Notice of Proposed Civil Penalty, she will have no further right to a hearing.

VII

After due notice, and an opportunity for hearing, which the Defendant did not accept, on May XX, 19XX the FAA issued an Order assessing a civil penalty in the amount of \$750 for violation of Section 107.21(a)(1) of the Federal Aviation Regulations. The FAA further ordered that the assessed penalty be paid immediately. A copy of the Order Assessing Civil Penalty is attached hereto as Exhibit 1.

VIII

In accordance with Sections 901, 903, and 905 of the Federal Aviation Act (49 U.S.C. App. 1471, 1473, and 1475), the Defendant is subject to a civil penalty not to exceed \$1,000 for each violation of the Federal Aviation Regulations.

8/17/90

IX

By reason of the above, the Defendant is indebted to the United States in the amount of \$750 plus interest from the date of assessment.

X

The FAA , by letter dated June XX, 19XX, demanded payment of the above-described civil penalty.

XI

As of this date, the Defendant has not complied with the Order Assessing Civil Penalty dated May XX, 19XX, in that the defendant failed or refused to pay the civil penalty assessment despite having received notice of the proposed civil penalty and an opportunity for hearing, and despite demands by the FAA that the assessment be paid.

VII

Section 905(b) of the Act reads as follows:

(b) NO REEXAMINATION OF LIABILITY OR AMOUNT - In the case of a civil penalty assessed by the Administrator in accordance with this section, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

8/17/90

2150.3A CHG 6

Appendix 1

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendant in the amount of \$750, plus interest from the date of assessment, and costs of this action.

Respectfully submitted this _____ day of _____, 19xx.

United States Attorney

By:

Assistant United States Attorney

OF COUNSEL:

Attorney
Federal Aviation Administration
XXXXXXXXX Region
XXXXXXXX, XX XXXXX

COMPLIANCE/ENFORCEMENT BULLETIN 90-11

SUBJECT: SSER recommendations relating to informal communication between inspectors and attorneys and special emphasis programs.

DISCUSSION: The Administrator has approved several changes to the policies for analyzing violations and determining sanctions, and to the process for coordinating and handling proposed enforcement actions, as recommended by the recent System Safety and Efficiency Review (SSER) of the General Aviation Compliance and Enforcement Program. This Bulletin implements two of those recommendations. Each recommendation is set out verbatim and is followed by a discussion. These changes are effective immediately and will be incorporated into the next revision of the FAA Order 2150.3A.

I. Encouraging informal communications between inspectors and regional attorneys.

SSER C&E012: The Executive Director for Regulatory Standards and Compliance, in coordination with The Office of the Chief Counsel, should develop and publish a policy to encourage informal communication between regional enforcement personnel and Flight Standards District Offices and Air Traffic facilities, not only on a regularly scheduled basis for the specific purpose of conducting regulatory compliance seminars, but also at other (non-specific) times to field general questions and relay information.

This Bulletin is intended to facilitate open lines of communication between FSDO personnel, CASFO personnel, air traffic personnel, and the legal staff in the regions and Washington headquarters. Although these communications exist to some extent in all areas of the country, it is advantageous to expand their use and scope. There are often occasions where a short conversation or correspondence directly between appropriate field office (e.g., FSDO, CASFO, etc.) and legal personnel could answer a simple question and save much time. As an example, if an inspector has a question about the suitability of a particular piece of evidence in the investigation of an incident, a regional attorney can quickly give advice on the evidence. In addition, a short conversation between attorney and inspector may save hours and days of restructuring a file to make it usable by all parties. It is important to remember that direct communications outside the normal chain of command are not intended to usurp the responsibility or authority of any supervisor or manager. In most cases, each employee has the

11/26/90

responsibility to keep his/her supervisor apprised of significant developments in any situation, and in addition, each employee should seek the advice and counsel of the supervisor.

No supervisor or manager should place undue restrictions on open dialogue and sharing of information between field office and legal personnel. It is the aim of this Bulletin to allow open communications to improve the effectiveness and efficiency of working relationships among individual employees to better serve the public. In addition, where an effective and/or efficient way of communicating is found in a particular situation, that innovation should be shared with the rest of the affected FAA community.

On a more regular basis, the regional and headquarters legal and investigative staffs should consider joint compliance and enforcement conferences to promote consistency and standardization. Visits to field facilities to talk with inspectors, air traffic, and security personnel provide legal counsel an excellent opportunity to promote better understanding of policy, process, procedures, and interpretations. This allows free and open dialogues within and between the staffs and, ultimately, results in more effective and efficient compliance work. Finally, where general guidance is provided, every effort should be made to give that information the widest possible dissemination to the affected program offices. Although the SSER recommendations referred only to FSDO inspectors, the policy applies equally as well to communications with security inspectors.

II. Special emphasis compliance and enforcement programs.

SSER C&E019: AVR and AGC should issue an action notice incorporating the language found in Volume II [of the SSER], which describes the special emphasis program in compliance and enforcement. The action notice should remain effective until Order 2150.3A is amended to include this language.

It is the policy of the FAA generally to avoid instituting mandatory sanction programs. However, at times, special situations arise which dictate the need for more effective enforcement through increased sanctions or other measures to bring about compliance in certain areas where existing guidance is insufficient. In such circumstances, a special emphasis enforcement program, designed to focus on a particular area of noncompliance, can be an effective deterrent and raise awareness of a particular problem. Therefore, when necessary to reduce an elevated or critical incidence of noncompliance, special emphasis programs may be

instituted on a national or local geographical basis. They will be instituted nationally by a joint determination of the appropriate office or service (e.g., Flight Standards Service, Office of Civil Aviation Security, etc.) and the Office of the Chief Counsel. Regionally, a recommendation for a special emphasis program shall be made jointly by the appropriate regional division (e.g., Flight Standards division, Civil Aviation Security division, etc.) and Assistant Chief Counsel, after coordination with the Regional Administrator. A regional program may only be implemented with the concurrence of the Chief Counsel and the Director of the appropriate service or office.

In any case subject to the provisions of a special emphasis program, mitigating or aggravating factors will still be considered in the determination of sanction.

A special emphasis program should be instituted only when conventional methods of obtaining compliance have not been effective. It is important to attempt to measure the results of special emphasis programs on an ongoing basis in order to determine when to return to a normal or non-critical status in a selected area. A tracking system should be instituted to measure the effectiveness until termination of the program. Objective as well as subjective measurements should be used as appropriate. The key to the success of a special emphasis program is to accomplish the intended compliance objective and return to a non-emphasis sanction range as soon as possible. Normally, such a program would be established with a fixed expiration date and would not be in effect for more than one year.

Before a special emphasis program is instituted, complete coordination between all affected elements of the FAA, including FAA headquarters, must be instituted. Also, adequate publicity regarding the program should be given through such means as letters to airmen, pilot forums, press releases, and publication in Federal Register where appropriate.

ACTION:

I. Informal communications with agency attorneys.

Supervisors and managers of headquarters, regional, or field personnel involved in compliance and enforcement should avoid restrictions on open dialogue and sharing of information and opinions between those personnel and attorneys in the Office of the Assistant Chief Counsel for the region or the Office of the Chief Counsel.

11/26/90

II. Special emphasis enforcement programs. Paragraph 207f of FAA Order 2150.3A is revised, and new Paragraph 207g is added, to read as follows:

f. Compliance and enforcement bulletins. Periodic use will be made of Compliance/Enforcement Bulletins to amend FAA Order 2150.3A. The guidance in these Bulletins supersedes the guidance in this Order.

g. Special emphasis enforcement programs. It is the policy of the FAA generally to avoid instituting mandatory sanction programs. However, at times, special situations arise which dictate the need for more effective enforcement through increased sanctions or other measures to bring about compliance in certain areas where existing methods are insufficient. In such circumstances, a special emphasis enforcement program, designed to focus on a particular area of noncompliance, can be instituted on a national or local geographical basis. The following procedures will apply:

(1) Special emphasis should be used only when other methods of obtaining compliance have not been effective. Normally, such a program would be established with a fixed expiration date and would not be in effect for more than one year.

(2) A national program will be instituted by a joint determination of the appropriate office or service (e.g., Flight Standards Service, Office of Civil Aviation Security, etc.) and the Office of the Chief Counsel. A recommendation for a regional special emphasis program will be made jointly by the appropriate regional division (e.g., Flight Standards, Civil Aviation Security, etc.) and Assistant Chief Counsel, after coordination with the Regional Administrator. A regional program may only be implemented with the concurrence of the Chief Counsel and the Director of the appropriate office or service.

(3) Before instituting a special emphasis program, adequate publicity regarding the program should be given through such means as letters to airmen, pilot forums, and press releases. Also, a tracking method should be maintained to evaluate the effectiveness of the special emphasis program on an ongoing basis until termination of the program.

(4) In any case subject to the provisions of a special emphasis program, mitigating or aggravating factors will still be considered in the determination of sanction.

COMPLIANCE/ENFORCEMENT BULLETIN 91-1

SUBJECT: Enforcement action in cases involving drug convictions which do not involve falsification.

DISCUSSION: Compliance/Enforcement Bulletin No. 90-2 describes enforcement sanction policy in cases involving a single drug conviction for simple possession, and, "except in extraordinary circumstances," for cases involving a single conviction for more than simple possession and for cases involving more than one conviction. When this policy was announced in the Federal Register, the FAA reserved "the prerogative to take more or less stringent actions in individual cases where aggravating or mitigating circumstances are present." See, 54 Fed. Reg. 15145 (April 14, 1989). This Bulletin provides guidance for the Assistant Chief Counsel in exercising prosecutorial discretion and in determining when circumstances exist which may warrant departure from the general sanction policies stated in Bulletin 90-2.

Note that this policy does not apply to cases under Sections 602(b)(2) and 609(c) of the Federal Aviation Act of 1958, as amended. Section 609(c) requires the revocation of airman certificates for certain drug offenses involving the use of an aircraft where the person served as an airman or was aboard the aircraft in connection with the offense. Section 602(b)(2) prohibits the issuance of a new airman certificate to a person whose airman certificate had been revoked under Section 609(c), unless the Administrator finds that certain circumstances exist involving facilitating law enforcement efforts. The Administrator has not delegated the authority to make such a finding, and all such cases must be sent to the Chief Counsel's office for referral to the Administrator.

ACTION: In cases involving drug convictions which do not involve falsification (paragraph C in Bulletin 90-2), the Assistant Chief Counsel should take the following factors into account in determining whether a sanction other than that described in Bulletin 90-2 may be appropriate:

1. The circumstances underlying the criminal conviction. The sanctions in Bulletin 90-2 should be used if an aircraft was used in a criminal offense, or where other egregious circumstances exist.
2. The time which has passed since the conviction became final.
3. Confinement or other sentence completed as a result of the conviction.
4. Evidence of rehabilitation.

6/17/91

Sanctions shall also be in accordance with the following:

1. In every case, enforcement action shall be taken. The factors listed above may lead the Assistant Chief Counsel to determine that a suspension of less than 120 days is acceptable for a single simple possession conviction (C (1) of Bulletin 90-2), or a suspension instead of revocation is appropriate in the case of a conviction of other than simple possession or in the case of two or more convictions (C (2) and (3) of Bulletin 90-2).

2. The time served in prison will not be "credited" against a suspension. However, it may be considered in determining whether the public interest requires surrender of the airman certificate for the full period of the suspension, or warrants waiver of part or all of the period of surrender. The following is an example of a partial waiver to be included in an Order of Suspension in such a case:

PARTIAL WAIVER OF SUSPENSION

The Administrator has determined that, under the facts and circumstances of this case, a waiver of part of the requirement to surrender your certificate is appropriate. The 180-day suspension of your airman certificate ordered herein, although remaining a matter of record, will not fully be imposed, and you are required to surrender your certificate to the Administrator for a period of 30 days.

*

COMPLIANCE/ENFORCEMENT BULLETIN NO. 92-1

SUBJECT: Proportional civil penalties. Consideration of company size in determining the appropriate amount of civil penalty for air carriers and certain other certificate holders.

DISCUSSION: This Bulletin provides guidance to FAA personnel in determining the appropriate amount of civil penalty for Part 121 and 135 carriers, and other commercial operators, that violate the Federal Aviation Regulations (FAR).

Pursuant to paragraph 207 of the Compliance and Enforcement Program, Order 2150.3A, sanctions should serve "as punishment for the particular violation, as a deterrent to further violations, and as an example to others." It is the policy and practice of the FAA, in determining the amount of a civil penalty for a particular violation, to apply a sanction that will best promote future compliance. The guidelines discussed below are a means of placing a relatively equivalent deterrent effect on each air carrier that violates the same FAR, by considering the size of the carrier in determining an appropriate amount of civil penalty. Paragraph 207b(7) of FAA Order 2150.3A provides that the ability of the alleged violator to absorb the sanction should be considered in determining the amount of the penalty. However, the sanction ranges in paragraph 207d and the Enforcement Sanction Guidance Table do not differentiate between various sizes of respondent air carriers, but rather provide for the same range of sanctions for all carriers. A civil penalty which may be a mere "cost of doing business" to a major air carrier might compel a small air carrier to go out of business.

In order to establish standards for the implementation of this policy, the Office of the Chief Counsel established an Ability to Pay Working Group in 1989. That group developed draft guidelines that classify all Part 121 and Part 135 carriers into four groups in accordance with operating revenues and the number and variety of aircraft operated. The guidelines include the proportional maximum penalty amounts for single violations by carriers in each group as well as civil penalty ceilings for violations that are compounded by multiple flights. The guidelines do not address the ability of a particular respondent to pay a civil penalty; they only provide for sanction ranges which vary with the size of the company. The ability of a particular respondent to pay a particular civil penalty may be considered separately on a case-by-case basis.

*

1/16/92

- * Subsequently, the General Aviation Compliance and Enforcement System Safety and Efficiency Review (SSER) recommended that the draft "ability-to-pay" guidelines developed by the working group be implemented, after appropriate coordination, as an amendment to FAA Order 2150.3A. That recommendation was adopted as an action item by the Administrator in February 1990.

Accordingly, the Office of the Chief Counsel, the Office of Regulations and Certification, the Office of Civil Aviation Security, and the Office of Aviation Standards, upon consultation with the Office of Aviation Policy and Plans, have developed these guidelines as a means of placing a relatively equivalent deterrent effect on each air carrier that violates the same FAR, by considering the size of the carrier in determining an appropriate amount of civil penalty. While these specific guidelines do not apply to other companies holding certificates, the policy of seeking penalties generally relative to the size and revenue of the operation should be applied to repair stations, manufacturers, airports, and other entities holding certificates.

The system used to classify carriers by size should fairly categorize carriers of significantly differing size and, at the same time, be practical for use by field inspectors. The guidelines adopted divide carriers into four groups, a number which is manageable for practical use but which also permits fair and reasonable classification of air carrier enterprises by size. "Size," for this purpose, is a combined consideration of annual operating revenue, number and variety of aircraft operated; and number of pilots employed.

Group I carriers are those Part 121 operators with annual operating revenue of \$100,000,000 or more. This includes carriers considered by the Department of Transportation, Research and Special Programs Administration (RSPA), to be "majors" (\$1,000,000,000+ operating revenue) and "nationals" (\$100,000,000 to \$1,000,000,000 operating revenue) and currently includes the 20 largest U.S. air carriers. Group II carriers are all other Part 121 operators and large Part 135 operators (50 or more pilots or 25 or more aircraft on operations specifications), with annual operating revenue of less than \$100,000,000. These categories correspond to those used in the RSPA publication, "Air Carrier Industry Scheduled Traffic Statistics Quarterly." This publication provides FAA compliance and enforcement personnel with a frequently updated and readily available reference to determine classification of the larger air carriers.

Groups III and IV comprise Part 135 operators distinguished by the number of pilots employed and the number and variety of aircraft used. Group III consists of Part 135 operators with *

- * 6 to 49 pilots; or 6 to 24 aircraft; or any number of aircraft of 4 or more different types. Group IV consists of all Part 135 operators that do not meet the criteria for Group II or Group III, i.e., that have fewer than 6 aircraft of no more than 3 different types, and that employ fewer than 6 pilots. The category of Group IV carriers is essentially the same as the subcategory of Part 135 operators designated as "Basic Part 135 Operators" under FAA Order 8400.10, Air Transportation Operations Inspector's Handbook, at Paragraph 175. Thus, the criteria for distinguishing Group IV carriers correspond to a category of operation already used by Flight Standards for other purposes and familiar to inspectors. The information on the type and number of aircraft used by a carrier is readily available to the inspector, generally by reference to operations specifications. Information on the number of pilots employed can also be ascertained by preliminary investigation.

As a result, Group I carriers are readily identified by reference to available publications containing information on carrier revenues. Group III and IV carriers are identified by easily obtained (in most cases) information on the number of aircraft operated and the pilots employed by the carrier. Group II carriers can be identified by reference to both the published revenue information and aircraft and pilot information obtained by investigation. The categories contained in the guidance are, therefore, practical for use by FAA personnel, as well as representative of commonly accepted industry classification of operators by size and complexity of operation.

ACTION: Effective immediately, and until further notice, the following guidance should be followed by FAA personnel in determining the appropriate amount of civil penalty to be sought or assessed for FAR violations committed by Part 121 and 135 operators.

1. Air carriers are divided into the following groups. A carrier is assigned to the highest group for which it meets one or more criteria:

Group I 1/

All air carriers, Part 121, and 135, with annual operating revenue of \$100,000,000 or more.

1/ Operating revenue will be determined by reference to RSPA's. *

1/16/92

*

Group II 2/

All air carriers that hold Part 121 operations specifications and large Part 135 operators (50 or more pilots or 25 or more aircraft on operations specifications), with annual operating revenue of less than \$100,000,000.

Group III

All Part 135 operators that do not meet the criteria for Group II with:

- (1) 6 to 49 pilots; or
- (2) 6 to 24 aircraft; or
- (3) 5 or fewer aircraft

Group IV

All other Part 135 operators.

2. The normal ranges of sanction for single violations committed by air carriers, set forth in paragraph 1, page 3, Appendix 4 to Order 2150.3A, are amended as follows:

Group I

Maximum	-	7,500 - 10,000
Moderate	-	4,000 - 7,500
Minimum	-	1,000 - 4,000

Group II

Maximum	-	6,500 - 10,000
Moderate	-	3,500 - 6,500
Minimum	-	850 - 3,500

Group III

Maximum	-	5,500 - 10,000
Moderate	-	3,000 - 5,500
Minimum	-	750 - 3,000

Group IV

Maximum	-	4,000 - 10,000
Moderate	-	2,000 - 4,000
Minimum	-	500 - 2,000

2/ Air Carrier Industry Scheduled Traffic Statistics Quarterly.

- * 3. The maximum total civil penalty ordinarily imposed for a violation committed by an air carrier and compounded by multiple flights, as set forth in Order 2150.3A, paragraph 207d, is amended as follows:

	<u>Group I</u>	<u>Group II</u>	<u>Group III</u>	<u>Group IV</u>
Par. 207d(3)A: (Inadvertent isolated violations.)	\$100,000	\$ 75,000	\$ 50,000	\$25,000

Par. 207d(3)B: (Inadvertent systemic violations.)	\$200,000	\$150,000	\$100,000	\$50,000
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Par. 207.d(3)C. Refer to C&E Bulletin 90-6,
Reporting and Correction Policy.

Par. 207.d(3)D: (Failure to follow requirements designed to disclose failures to comply.)	\$500,000	\$375,000	\$250,000	\$125,000
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Par. 207.d(3)E. (Deliberate violations):

When Part 121 and 135 operators commit deliberate violations of the FAR, any civil penalties sought ordinarily should be in the range of 75% to 100% of the statutory maximum for each flight operated, regardless of the number of flights. In those instances in which the size of the air carrier would render such a maximum range civil penalty unduly harsh, agency personnel should exercise discretion to ensure that the amount of civil penalty sought is appropriate to the size of the carrier and the seriousness of the violation(s) committed. However, the amount of civil penalty sought always should be greater for deliberate violations than for inadvertent violations.

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COMPLIANCE/ENFORCEMENT BULLETIN NO. 92-2

SUBJECT: Reporting and correction policy and implementing guidance for holders of production approvals.

SUMMARY: In May 1990, the Federal Aviation Administration (FAA) issued Compliance/Enforcement Bulletin No. 90-6, which announced the FAA's reporting and correction policy and implementing guidance. The bulletin was intended to improve safety compliance by allowing the FAA to forego a civil penalty where a FAR Part 121 or 135 certificate holder has promptly disclosed to the FAA an apparent violation and has taken prompt action to correct the violation and prevent its recurrence. Compliance/Enforcement Bulletin No. 90-6 stated that its policy may be extended to other categories of certificate holders. In this Bulletin, the FAA extends that policy to include holders of production approvals issued under FAR Part 21. Application should be made in accordance with the following guidance.

POLICY: The FAA will not seek to impose a civil penalty on a production approval holder for failing to comply with the requirements of the FAR, when all of the following circumstances are present:

1. The production approval holder promptly discloses a noncompliance to the FAA. The notification may be made initially to the FAA through informal communication, but in all cases must be reported to the FAA in writing, prior to FAA consideration under this policy. Holders who fail to comply with FAR 21.3, Reporting of failures, malfunctions, and defects, will not be considered to have promptly disclosed the noncompliance, as required under this policy.
2. The noncompliance is not deliberate or intentional.
3. The noncompliance does not indicate a lack of qualifications, nor does it reasonably call into question the qualifications of a production approval holder.
4. The production approval holder, upon discovery of the noncompliance, has taken or has begun to take immediate corrective action.
5. The production approval holder has taken, or has agreed to take, remedial action satisfactory to the FAA as may be necessary to preclude recurrence of the noncompliance.

3/20/92

Notwithstanding a production approval holder's failure to report an apparent violation, this Bulletin provides that the nature and extent of a production approval holder's corrective action may be considered in issuance of a letter of correction or in mitigation of any civil penalty which might otherwise be appropriate. However, where the production approval holder fails to promptly disclose and correct violations of which it was aware or should have been aware (for example, because the situation was obvious or because the company, through its auditing or evaluation program or other means, should have discovered the violations), substantial civil penalties, including the maximum allowed under the law, are warranted and may be sought.

It is the responsibility of the Chief Counsel and the Associate Administrator for Regulation and Certification to implement this policy. This compliance and enforcement policy is effective immediately, until further notice, and applies to all current and future enforcement cases.

ACTION: In order to ensure that all elements of this policy are present and observed, the following guidance should be followed:

1. When the production approval holder initially makes a disclosure of noncompliance to the FAA, contact should be made with, or directed to, the appropriate principal aviation safety inspector for manufacturing (ASI). In most cases, a telephone communication or facsimile notification will be considered an adequate means of initial contact.
2. The principal ASI will respond to the production approval holder with a Letter of Acknowledgement (LOA) (Figure 1). The LOA includes a request for a written report and proposed remedial action plan to be submitted by the production approval holder to the FAA within 10 calendar days, and serves in lieu of a letter of investigation.
3. The written report should include, at a minimum, the following information: how, where, and by whom the apparent noncompliance was detected; when the production approval holder disclosed the noncompliance to the FAA; a brief description of the noncompliance and the applicable FAR violated; a brief description of the immediate corrective action taken; and the identity of the company official responsible for developing the remedial action plan.

4. A remedial action plan refers to a long-term effort by the production approval holder to prevent the recurrence of a noncompliance. To be acceptable under this policy, the remedial action plan must contain the following information:

- a. Identification of the noncompliance.
- b. Analysis of objective evidence to determine the principal cause(s) of the noncompliance.
- c. Identification of planned remedial action steps in response to the noncompliance and the analysis of supporting documentation.
- d. Implementation schedule for initiating remedial action.
- e. Company official(s) responsible for implementing remedial action.

5. In cases where a proposed remedial action plan has not been fully developed within 10 calendar days of receipt of the LOA, the production approval holder should provide the FAA with an overview of planned actions. A detailed description of the plan should be provided to the FAA within 30 calendar days after initial notification was made to the principal ASI.

6. When the apparent noncompliance takes place at a production approval holder's supplier facility, and the supplier is located in a different geographical area than the production approval holder, the following handoff procedures should be followed:

- a. A letter requesting an investigation and a copy of the LOA will be sent by the requesting district office having certificate management responsibility to the district office having geographical responsibility for the area in which the supplier is located, with copies to each Aircraft Certification Directorate, and Manufacturing Inspection District Office involved.
- b. The requesting district office should include in its letter all information received from the production approval holder.

3/20/92

7. The manager of the Manufacturing Inspection District Office (MIDO) having responsibility over the production approval holder shall ensure that the facts and circumstances surrounding any apparent violation are thoroughly investigated, analyzed, reviewed, and reported. The principal ASI, with the concurrence of the MIDO manager or his delegate, shall ascertain whether the apparent noncompliance was deliberate or inadvertent. Based on this analysis, the principal ASI, with the concurrence of the MIDO manager or his delegate, will determine the effectiveness of the production approval holder or supplier's remedial action measures to preclude a recurrence of the apparent noncompliance.

8. Whenever it is determined under this policy that no civil penalty will be sought, the production approval holder should be so advised by a Letter of Correction issued in accordance with Section 13.11(b)(2) of the FAR. As provided in that section, such a letter does not constitute a formal adjudication of the matter. However, in the event that the agreed remedial action is not fully completed, civil penalty action or other action should be considered and may be taken.

9. The Letter of Correction should be prepared by the principal ASI and forwarded to the production approval holder upon receipt of its written report. It should contain all pertinent facts, including, but not limited to: how, where, and by whom the apparent noncompliance was detected; when the production approval holder disclosed the noncompliance to the FAA; the nature and extent of any actions taken to correct the noncompliance and preclude its recurrence; and any mitigating circumstances which were considered to be relevant.

10. Following issuance of the Letter of Correction, the case should be closed, subject to reopening in the event that the agreed remedial action is not completed. Until further notice, the file of each closed case should be forwarded to the appropriate Assistant Chief Counsel.

Figure 1. SAMPLE LETTER OF ACKNOWLEDGEMENT

Federal Aviation Administration
Manufacturing Inspection District Office
Address
Phone Number

CERTIFIED RETURN RECEIPT

April 24, 1991

File Number 90RT00000

Oshkosh Manufacturing
Kokotee Ave., N.W.
Anywhere, USA 12345

Attn: Ms. Jane Doe
President, Quality Assurance

This office is writing to confirm your initial notification of April 10, 1991, of a possible violation of Federal Aviation Regulations (FAR), Part 21, Certification Procedures for Products and Parts, by Oshkosh Manufacturing with regard to a structural defect of the Mongoose wing spar.

This office expects Oshkosh Manufacturing to provide both a remedial action plan and written report to the principal inspector by _____ (10 days from date of initial notification) unless otherwise agreed to by this office. The remedial action plan must contain the following information: identification of the noncompliance; analysis of objective evidence to determine the principle cause(s) of the noncompliance; identification of planned remedial action steps in response to the noncompliance and the analysis of supporting objective evidence; implementation schedule and timeframe for initiating remedial action; and company official(s) responsible for implementing remedial action.

The written report should include, at a minimum: how, where, and by whom the apparent noncompliance was detected; when the production approval holder disclosed the noncompliance to FAA; a brief description of the noncompliance and the applicable FAR violated; a brief description of the immediate corrective action taken; and the identity of the company official responsible for developing the remedial action plan.

This letter of acknowledgement serves in lieu of a letter of investigation. If you have any questions in regard to the above, please contact us at your earliest convenience.

Sincerely,

J. P. Jones
Principal Inspector

COMPLIANCE/ENFORCEMENT BULLETIN 92-3

SUBJECT: Guidance on enforcement action in cases involving detection of simulated weapons during Federal Aviation Administration (FAA) screening evaluations.

DISCUSSION: This bulletin provides new policies for enforcement actions on the failure of air carriers to detect simulated weapons, explosive devices, and other test objects during screening evaluations conducted by FAA Civil Aviation Security special agents.

In March 1988, the FAA adopted a strict civil penalty enforcement policy for air carriers' failure to detect simulated weapons, explosive devices, and other test objects during FAA screening checkpoint evaluations. Under this policy, each failure to detect a test object resulted in a civil penalty of \$1,000 or \$10,000, depending solely upon the carrier's previous success in detecting test objects at that screening checkpoint. On December 14, 1988, the Sanction Guidance Table in Appendix 4 of this order was adopted. It provided for a civil penalty in the maximum range (\$7,500 to \$10,000 for the largest air carriers) for failure to detect a test object.

Since the FAA began strong enforcement action for these cases, the aggregate detection rate among air carriers has improved substantially. The industry has enhanced significantly its screener training and adopted an aggressive self-testing campaign. However, the rate of detecting test objects during FAA screening point evaluations has not improved significantly since 1990.

This bulletin establishes a new enforcement policy for these cases in an effort to further improve the detection rate. Under this policy, the FAA will place greater emphasis on identifying the causes of an apparent failure and the remedial action needed to improve compliance. Data on causes of failures and the success of remedial action will be maintained in the Civil Aviation Security Information System (CASIS). Information collected under this procedure will enable both air carriers and the FAA to analyze test object detection failures, to determine root causes of failures, to evaluate the effectiveness of corrective action, to make comparisons with improvements made elsewhere, and to assess the overall effectiveness of the passenger screening system. The goal will continue to be to prevent similar failures in the future. This policy is designed to encourage further improvements to the screening system and attain the ultimate goal of 100 percent detection.

7/21/92

Each failure to detect a test object will result in either administrative action or civil penalty action. The previous failures to detect test objects at specific checkpoints will be among the significant factors considered in deciding which type of enforcement action to use and determining the appropriate amount of any civil penalty, but will not be solely determinative of the sanction. The type of action, as well as any civil penalty amount, will be determined only after consideration of all mitigating and aggravating circumstances surrounding the failure.

Civil penalty action generally will be the appropriate enforcement action. However, in some circumstances administrative action may be used. This policy allows broad discretion on the part of responsible FAA personnel to determine what enforcement action best suits the circumstances of the specific case.

ACTION: Effective September 1, 1992, all FAA personnel will use the procedures outlined in this bulletin to take action following the failure of an air carrier to detect simulated weapons, explosive devices, and other test objects during FAA screening checkpoint evaluations.

GUIDANCE:

1. Special agents shall prepare an enforcement investigative report (EIR) documenting each failure to detect a test object. Selection of the type of enforcement action, and determination of the amount of any proposed legal sanction, will depend upon the facts and circumstances surrounding the alleged violation.

2. The special agent should investigate and analyze factors that led to the failure and fully document the findings and analysis in the EIR. Each investigation should include, where appropriate, such evidence as witness statements or records of interviews of all principal witnesses and other evidence to describe the circumstances of the failure. The air carrier's cooperation and assistance should be requested and used to the extent possible. The investigation may include, but is not limited to, the following:

a. If insufficient scrutiny or attention by the screener contributed to the failure, the special agent should consider what factors contributed to that inattention or lack of scrutiny, such as poor training, fatigue, duty schedules, or the screener's fitness for duty that day.

b. The special agent should consider whether any distractions or environmental factors may have contributed to the failure, such as reflective glare on the x-ray monitor or noise in the area.

c. The special agent should determine whether the equipment was working properly and had been tested as required.

d. Interviews of the screener and supervisor generally will be central to the investigation, as will a careful assessment of the physical layout and environment of the screening point. Complete witness statements should be obtained.

3. The special agent should consider the corrective action that may be needed to remedy the cause of the failure. The air carrier should be requested to assist in identifying the cause(s) of the failure and to formulate the most effective means of correcting deficiencies when they are observed. The special agent should, as soon as practicable, notify a responsible representative of the air carrier at the airport, the PSI, and the federal security manager, if assigned to the airport, upon his or her discovery of any condition that affects the safety or security of the operation.

4. Paragraph 205 and Chapter 11 of this Order provide for the use of administrative action instead of legal enforcement action in certain circumstances. In the case of a failure to detect a test object, administrative action may be taken when it is found that legal action serves no valid purpose and that use of an administrative action is in the public interest. While the use of administrative action is at the discretion of the field office, all of the following factors, none of which are determinative, must be present:

a. The air carrier has achieved a high success rate in detecting test weapons, explosives, and other objects at that station during recent passenger screening checkpoint evaluations. As an example, the air carrier may be considered highly successful when it has had no comparable failures in the previous 12 months. Comparable failures refers to similar causes of the failure, similar test objects, or other similar aggravating circumstances.

b. The failure to detect the test object did not result from egregious circumstances, such as those described in paragraph 5.c., below.

7/21/92

c. The air carrier displays a constructive attitude toward complying with the regulations. This constructive attitude may be demonstrated in part by the carrier's cooperation in investigating the cause of the test object failure, and in determining and taking the corrective action that might best prevent a recurrence.

d. Neither the screener nor the supervisor lacked the training or qualifications required under the FAR.

There must be agreement between the air carrier and the FAA that corrective action acceptable to the FAA has been taken or will be taken within a reasonable period of time.

5. If a civil penalty is determined to be the appropriate sanction, the amount of the penalty should be based largely on an assessment of the nature and causes of the failure to detect the test object and the prior enforcement history of the responsible air carrier at that checkpoint. The sanction ranges refer to the ranges described in the Sanction Guidance Table, Appendix 4 of this order, and in Compliance/Enforcement Bulletin 92-1.

a. A civil penalty in at least the moderate range generally is appropriate. The civil penalty may be in the minimum range or the maximum range if unusual mitigating or aggravating circumstances exist.

b. The pattern of previous failures by that air carrier at a specific checkpoint is significant, and may warrant an increased or decreased civil penalty. Repeated failures to detect one type of test weapon, repeated failures to detect when using a specific type of equipment, and how remote in time previous failures were, should be considered.

c. When a failure results from egregious circumstances, a civil penalty in the maximum range generally is appropriate. Notwithstanding the effective date of this bulletin, problems with an air carrier's screening system or equipment that existed before the effective date, but were not corrected, may be considered in determining whether egregious circumstances exist. Examples of egregious circumstances include the following:

i. Failures to identify or correct a reasonably apparent contributing factor affecting the screener or environment. Such factors include training that does not meet the requirements of the FAR.

- ii. Serious neglect of duties by screener or supervisor, such as deliberate or gross lack of attention to assigned tasks.
- iii. Failure to meet screener training requirements.
- iv. Failure to meet screener employment standards.
- v. Failure to provide screener staffing levels consistent with the volume of persons processed through the checkpoint.

COMPLIANCE/ENFORCEMENT BULLETIN NO. 93-1

SUBJECT: Policy and Procedures for the Collection of Administratively Assessed Civil Penalties.

DISCUSSION: This Bulletin sets forth the guidance and procedures to be followed by Federal Aviation Administration (FAA) personnel for the collection of administratively assessed civil penalties.

In 1991, the Office of Inspector General (OIG) conducted a review of the civil penalty demonstration program. In its report, the OIG identified several deficiencies regarding the FAA's administrative collection of outstanding civil penalties that resulted in an under-reporting of agency assets. Implementation of the following procedures should reduce the burden of civil penalty collection of the Chief Counsel's office without impacting our authority to compromise or settle civil penalty cases. These procedures will assist us in complying with the Federal Debt Collection Act, the regulations that implement it, and recent Department of Justice initiatives, and should satisfy the OIG's concerns regarding the reporting of accurate accounts receivable by our accounting offices.

This guidance reflects changes brought about by the FAA Civil Penalty Administrative Assessment Act of 1992, as well as amendments to the Federal Debt Collection Act, the Federal Claims Collection Act, and the Federal Claims Collection Standards.

ACTION: The guidance contained in this bulletin replaces the guidance contained in paragraph m. and figures 6 and 11 of Compliance/Enforcement Bulletin No. 90-10.

APPLICABILITY: This bulletin applies only to the collection of civil penalties that are administratively assessed by the FAA. The collection of judgments rendered on behalf of the FAA in federal district courts is governed by the United States Attorneys Manual and other Department of Justice policies.

PROCEDURES:

Orders Assessing Civil Penalty Against Any Person Other Than a Person Acting in the Capacity of a Pilot, Flight Engineer, Mechanic, or Repairman.

New Section 901(a)(3)(E) of the Federal Aviation Act states that a civil penalty against a person other than a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, can be assessed only after the person is

2/4/93

afforded notice and an opportunity for a hearing on the record under 5 U.S.C. 554. If a respondent requests a hearing, a hearing before an administrative law judge satisfies the hearing-on-the-record requirement of 5 U.S.C. 554. Section 13.202 of the Federal Aviation Regulations (FAR) describes an order assessing civil penalty as a document that contains a finding of violation and that may direct payment of a civil penalty. Further, it defines an order assessing civil penalty as follows:

...Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge shall be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator shall be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Orders of Assessment Against Persons Acting in the Capacity of a Pilot, Flight Engineer, Mechanic, or Repairman.

New Section 901(a)(3)(D) of the Federal Aviation Act states that any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, against whom an order assessing a civil penalty is issued by the Administrator, may appeal the order to the NTSB, which will afford the respondent notice and an opportunity for a hearing on the record under 5 U.S.C. 554. In the case of pilots, flight engineers, mechanics, and repairmen, the order assessing civil penalty will be referred to as an order of assessment. An order of assessment is different from an order assessing civil penalty in that the order of assessment is issued before the respondent is afforded a hearing on the record. In effect, an order of assessment under 901(a)(3)(D) is analogous to a final notice of proposed civil penalty issued under 901(a)(3)(E). Because the respondent has not been afforded an opportunity for a hearing on the record at this stage of the proceeding, an order of

assessment does not become a legally collectible debt, unless the respondent fails to request a hearing before the NTSB within the timeframe allotted under the Board's rules.

Orders Assessing Civil Penalties and Orders of Assessment must satisfy statutory requirements of an initial demand letter.

An order assessing civil penalty and an order of assessment (absent a request for a hearing on the record) reflect legally collectible debts, and collection of the assessed amounts should be undertaken immediately. To expedite the collection of civil penalties, these orders must contain language that satisfies the requirements of an initial "demand letter" under the Federal Debt Collection Act and the Federal Claims Collection Standards. An initial demand letter must inform the debtor of: 1) the amount of, and the basis for, the indebtedness and whatever rights the debtor may have to seek review within the agency; 2) the applicable standards for assessing interest, penalties, and administrative costs; 3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered; and 4) the possibility of referral of the debt to a credit reporting or collection agency or to the Department of Justice. FAA attorneys should exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated.

In cases involving persons other than those acting in the capacity of a pilot, flight engineer, mechanic, or repairman, agency counsel must include the language contained in the sample order assessing civil penalty (Attachment (1)). This revised sample order includes a paragraph adding the information outlined above, along with a notice of the address where the debtor should send his payment (the address of the accounting office servicing the region where the order originated). Attorneys should not advise the debtor to send the check to the Assistant Chief Counsel's office.

In cases involving persons acting in the capacity of a pilot, flight engineer, mechanic, or repairman, counsel will include the language contained in the sample order of assessment

Appendix 1

(Attachment (2)). This sample order includes information regarding the respondent's right to a hearing before the NTSB, and indicates that the order of assessment becomes final if the respondent does not request a hearing within the appropriate timeframe. Because an order of assessment may serve as the final order in cases where the respondent fails to request a hearing, the language of an initial demand letter under the Debt Collection Act has been added to this document. Additionally, a notice of the address where the debtor should send his payment appears in the document (the address of the accounting office servicing the region where the final notice originated). Again, checks should not be sent to the Assistant Chief Counsel's office.

The individual preparing the order assessing civil penalty or the order of assessment must fill in the appropriate interest rate (the published Treasury Current Value of Funds Rate, or "CVF" rate) in effect on the date the order is issued. The CVF rate is a fixed rate established quarterly or yearly by the Department of the Treasury and can be obtained by telephoning FTS 202-874-6995 for a recorded message (or FTS 202-874-6705 for special assistance). The amount of the accounting office's administrative charge must also be completed. Currently, this amount is \$12.00. 49 C.F.R. 89 allows interest, collection charges, or late penalty charges to be waived if certain findings are made (see section 89.23(e)).

Opening an Account Receivable.

The office issuing an order assessing civil penalty under Section 901(a)(3)(E) should immediately send a copy of the order to the accounting office in that region so that an account receivable can be opened. The Office of Accounting already has a computerized tickler system that will automatically send to the debtor the thirty-and sixty-day demand notices required by the Debt Collection Act. The automated system will notify the debtor of the administrative charges as well as any penalties added to the debt as a result of delinquency.

The office issuing an order of assessment under Section 901(a)(3)(D) must track the timeframe the respondent has to request a hearing. If the respondent does not request a timely hearing, the office issuing the order of assessment will immediately send a copy of the order to the accounting office in that region so that an account receivable can be opened.

The accounting office will handle the order of assessment the same way it handles an order assessing civil penalty for purposes of debt collection. The date of "issuance" of the order of assessment for purposes of the date upon which interest begins to run is the date that the respondent's right to request a hearing expires. If the civil penalty is paid within 30 days from the date the respondent's right to request a hearing expires, no interest is assessed.

In all cases where an order assessing civil penalty has been sent without the language contained in the sample order found at Attachment (1), the attorney immediately should send the debtor the letter found at Attachment (3). Note that the fixed annual rate of interest and the administrative charges must be included in this letter. A copy of the letter should be sent to the appropriate accounting office (if an order has not been forwarded) so an account receivable can be opened. Accounting will send any subsequent delinquency notices to the debtor.

The accounting offices would prefer to have the debtor's social security number in the event it becomes necessary to refer a delinquent debt to a credit reporting or collection agency. For certificated airmen, this information may be contained in the Comprehensive Airman Information System. This information, if available, should be provided with any order sent to accounting. If the debtor is a company, the order should include the company's IRS employer identification number (EIN), if available.

Compromise Orders.

Compromise orders issued under section 13.16(1) of the FAR should be issued only after receipt of payment or upon receipt of a signed promissory note providing for installment payments (Attachment (4)). This is a departure from the way we have processed compromise orders in the past. In the case of receipt of payment by the Assistant Chief Counsel's office, the payment and the compromise order should be sent to the accounting office immediately so that an account receivable can be opened and closed. In the case of a promissory note, the note and compromise order should be sent to the accounting office immediately so that an account receivable can be opened. The accounting office will be responsible for tracking proper payment of the note, and sending out any subsequent delinquency notices. Attorneys should not delay issuance of a compromise order until all payments are received. Attorneys should not advise the respondent to send payments to the Assistant Chief Counsel's office. If an installment payment plan is agreed upon, it should be reflected in an ensuing promissory note, and a compromise order should be issued

Appendix 1

immediately. Both the promissory note and the compromise order are then sent to the responsible accounting office. The compromise order should accompany the payment or promissory note so that the accounting office will have a case number to use when opening the account receivable.

Installment Payments.

In some cases, the respondent may agree to pay a civil penalty, and negotiate an installment payment schedule with the attorney handling the case. In that instance, the installment payment schedule must be memorialized in a promissory note (4 CFR 103.11 requires a promissory note for amounts over \$750; however, it is our practice to require a promissory note in all cases). The order assessing civil penalty, compromise order, or the order of assessment will be issued immediately and sent with the promissory note that outlines the installment agreement to the accounting office. The accounting office will use the information in the promissory note to open an account receivable and assume the responsibility for notifying the debtor if he becomes delinquent at any time during the repayment period. Attorneys should not delay the issuance of an order assessing civil penalty, a compromise order, or an order of assessment until payments are received; payments are to be sent to the cognizant installment accounting office.

After an Account Receivable is Opened.

In all cases, after the accounting office has opened an account receivable, further administrative collection efforts will originate from that office. The Office of Accounting has agreed to notify its personnel that any telephonic or written inquiries it receives questioning either the amount or validity of an order will be forwarded immediately to the attorney who issued the order. As a result, FAA counsel will be in a position to exercise authority to compromise the claim under 31 U.S.C. 3711(a)(2), if warranted. If a claim is compromised under 31 U.S.C. 3711(a)(2), the accounting office is notified and the respondent will be directed to remit payment to the accounting office.

The Debt Collection Act requires all agencies to take aggressive collection action. This includes: utilizing a debt-collection contractor; contacting credit reporting agencies; attempting IRS tax refund offsets; forwarding the collection file to the Assistant Chief Counsel's office for

referral to the Department of Justice; and if all else fails, reporting to the IRS, as income to the debtor, the amount of any civil penalty the agency writes off as a bad debt. The accounting office will notify the appropriate Assistant Chief Counsel when the debt has been collected or of any other final action it takes in collecting the debt or closing the account.

The responsible accounting offices may require further data regarding a debtor and a debtor's ability to pay, to aid in collection. This assistance may be obtained from regional security offices, credit reporting agencies or other sources.

Currently, administrative debt collection activities in the regions differ from one regional accounting office to another. The Office of Accounting at headquarters is in the process of standardizing these activities in the regions.

Referrals to the Department of Justice.

Regardless of the amount of the debt, and when other administrative collection attempts have failed, the responsible accounting office will request the Assistant Chief Counsel that issued the order assessing civil penalty or the order of assessment to refer the debt to the Department of Justice for legal action. Each Assistant Chief Counsel is responsible for all referrals to the Department of Justice. While the Assistant Chief Counsel has discretion not to refer a non-meritorious case to the Department of Justice, it is the policy of this office to refer all cases, even those under \$600, if collection is in furtherance of regulatory goals. This bulletin supersedes any existing instructions that require automatic non-referral of debts under \$600.

To refer matters to the Justice Department, the FAA must fill out a Claims Collection Litigation Report. Attachment (5) contains the report form and instructions for completing it. Attachment (6) is a sample letter of referral to the Department of Justice's intake facility, along with a sample Certificate of Indebtedness. Attachment (7) is a sample complaint for filing in the appropriate United States District Court. The Department of Justice has requested that the agency ensure that any request to the IRS for offset from the debtor's income tax return be withdrawn before referring matters for litigation. This responsibility will normally be handled by the regional accounting office. Unless otherwise advised, the attorney referring the matter to the Justice Department should check with the accounting office to be sure that any IRS offset request has been withdrawn.

2/4/92

Payments received by the Assistant Chief Counsel.

In the event debtors send checks to the Assistant Chief Counsel's office rather than the accounting office, the checks should be sent to the accounting office immediately. In no event should checks remain in counsel's office for longer than 24 hours. Each Assistant Chief Counsel should appoint one individual to be the principal contact responsible for collecting any checks sent to the legal office and for transmitting those checks to the appropriate accounting office.

Collection Procedures in the Event of a Hearing or Appeal.

In the event the respondent requests a hearing before an administrative law judge (ALJ), the attorney handling the case waits until the debtor's appeal rights have been exhausted before issuing a letter demanding payment. If a decision is reached in favor of the FAA by an NTSB administrative law judge in a civil penalty case, the letter found at Attachment (8) should be mailed after the time period for appealing that decision to the full Board has expired. If the decision is issued in favor of the FAA by a DOT administrative law judge, the letter found at Attachment (8) should be mailed after the ten-day period for filing a notice of appeal has expired. In the case of a decision rendered in favor of the FAA by the Administrator on appeal or by the full NTSB, the attorney mails the letter found at Attachment (8) after the 60-day period for seeking judicial review has expired. A copy of the letter should then be forwarded to the responsible accounting office so that it can open an account receivable and begin normal collection efforts.

OTHER GUIDANCE:

Collection personnel should also consult the United States Treasury Financial Manual, which provides in-depth explanations of many of the issues discussed in this bulletin.

Attachments

Attachment (1)

SAMPLE ORDER ASSESSING CIVIL PENALTY
(Federal Aviation Act)CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. 93NM76891
[S.S. No. ###-##-####] or [IRS EIN]

ORDER ASSESSING CIVIL PENALTY

On [Date], you were advised through a Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$_____.

After consideration of all the available information, including the information you presented at the [Date], informal conference, it has been determined that:

Insert findings of fact and violations, as in the Notice of Proposed Civil Penalty or as modified based on new information.

NOW, THEREFORE, IT IS ORDERED, pursuant to section 901(a)(3) of the Federal Aviation Act, as amended (49 U.S.C. app. 1471(a)(3)), that you be and hereby are assessed a civil penalty in the amount of \$_____.

[Include one of the following:]

You are hereby ordered to pay, immediately, the assessed amount by mailing or delivering a certified check or money order in the amount of \$_____, payable to "The Federal Aviation Administration," to the Office of Accounting, address. The amount of civil penalty assessed in this Order constitutes a debt owed to the United States. You have now exhausted your right to seek review of the validity or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent. For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date of this Order, at a fixed annual rate of _____%, along with an administrative charge of \$_____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt

of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

[or]

We hereby acknowledge receipt of your check in the amount of \$_____, which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Attorney

Attachment (2)

[Sample Order of Assessment]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Annie O. Kley
22 Caliber Way
Pistol, South Gun 00000

Re: Case No. 93NM76891
S.S. No. ###-##-#### or [IRS EIN]

ORDER OF ASSESSMENT

On [Date], you were advised through a Notice of Proposed Assessment that the FAA proposed to assess a civil penalty in the amount of \$_____.

[Insert one of the following:]

As of this date, we have received no response to this notice.

[or]

After consideration of all of the available information, including the information you presented at the March xx, 19xx, informal conference, it appears that:

[Insert findings of fact and violations, as in the Notice of Proposed Assessment or as modified based on new information.]

Under Section 901(a)(1) and (3) of the Federal Aviation Act, as amended (49 U.S.C. app. 1471(a)(1) and (3)), you are subject to a civil penalty not to exceed [\$1,000] [\$10,000] for each of the violations noted. By reason of the foregoing facts and circumstances, we hereby assess a civil penalty in the amount of \$_____.

You may appeal from this order within _____ days from the date it is served by filing a Notice of Appeal with the Office of Administrative Law Judges, National Transportation Safety Board, Suite 5531, Fifth Floor, 490 L'Enfant Plaza East, SW., Washington, D.C. 20594

In the event you appeal, a copy of your notice must be furnished to the undersigned FAA attorney in the Office of the Assistant Chief Counsel at the address noted in this order. Your request must be dated and signed. If you do not appeal, you must pay the assessed civil penalty.

2/4/93

[Insert one of the following:]

You may pay the penalty amount by submitting a certified check or money order payable to the "Federal Aviation Administration," to the Office of Accounting, [Insert address of appropriate accounting office].

If you do not request a hearing before the National Transportation Safety Board on or before _____ days after you receive this Order, the amount of debt assessed in this Order constitutes a legally collectible debt owed to the United States. You will not have a right to seek review within the Federal Aviation Administration of the validity and/or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent. For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date this order is issued, at a fixed annual rate of _____%, along with an administrative charge of \$_____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

[or]

We hereby acknowledge receipt of your check in the amount of \$_____, which we accept in full settlement of this matter. You may consider the matter closed.

Assistant Chief Counsel

By: _____
Attorney

[Letter to be used for existing cases where Order Assessing Civil Penalty has already been issued without the required debt collection notice language. This letter will serve as the first required written demand letter.]

[Date]

Case No. ##XX####

[S.S.No. ###-##-####] or [IRS EIN]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and REGULAR MAIL

TO: NAME
ADDRESS
ADDRESS

On [Date], this office issued to you, under section 901(a)(3) of the Federal Aviation Act of 1958, as amended, an Order Assessing Civil Penalty in the amount of \$_____.

The amount of civil penalty assessed in that Order constitutes a debt owed to the United States. You have exhausted your right to seek review of the validity or amount of this debt. If this debt is not paid in full within 30 days of your receipt of this letter, the debt is considered delinquent. For delinquent debts, federal regulation (49 C.F.R. section 89.23) requires us to charge interest, from the date of this letter, at a fixed annual rate of _____%, along with an administrative charge of \$_____ per month, representing our costs of administrative collection. Furthermore, if the full amount assessed is not paid in full within 120 days of your receipt of this letter, we are required to assess an additional penalty at an annual rate of 6%, accruing from the date of delinquency. Delinquent debts may be reported to consumer reporting agencies or commercial credit bureaus, which could adversely affect your credit rating. Nonpayment of this debt may ultimately result in a referral to a collection agency, the Internal Revenue Service, or to the United States Department of Justice for enforced collection.

Please pay the assessed amount by mailing or delivering a certified check or money order in the amount of \$_____, payable to "The Federal Aviation Administration," to Office of Accounting, [address of applicable accounting office]. If you have any questions concerning this matter, you may contact me at (###) ###-####.

NOTE: Add any other provisions that
are applicable under 49 C.F.R. 89.21(b).

Sincerely,

Assistant Chief Counsel

By: _____
FAA Attorney